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House Committee on Foreign Affairs Subcommittee on Asia, the Pacific and the Global Environment

"Crimes Against Humanity: When Will Indonesia's Military Be Held Accountable for Deliberate and Systematic Abuses in West Papua?"

September 22, 2010

Testimony of Sophie Richardson, Acting Asia Director, Human Rights Watch

"Crimes Against Humanity: When Will Indonesia's Military Be Held Accountable for Deliberate and Systematic Abuses in West Papua?"

Mr. Chairman, Human Rights Watch thanks you and the subcommittee for holding this timely hearing on human rights abuses and accountability for the Indonesian military in Papua.

Since 1965, a low level armed separatist insurgency led by the OPM (the Free Papua Movement) has simmered in Papua. Yet while the insurgency is limited to small units of loosely organized guerillas, many in the national government and the armed forces see Papua as the front line in efforts to destroy Indonesia's territorial integrity. Indonesian authorities have responded to the insurgency with militarization of the region and often harsh and disproportionate responses to dissent or criticism. Both army troops and police units, particularly mobile paramilitary police units (*Brigade Mobil* or *Brimob*), engage in largely indiscriminate village "sweeping" operations in pursuit of suspected militants, using excessive, often brutal, and at times lethal force against civilians.

A broad independence movement has also emerged in Papua, and its supporters' activities have mainly involved non-violent resistance to authorities in Papua through flag raisings, mass mobilization for demonstrations, and meetings to form political manifestos for an independent Papua. The security forces' indiscriminate approach to pro-independence Papuans has created a climate of fear and insecurity in the remote region, in which abuses can continue with impunity.

Human Rights Watch takes no position on claims to self-determination in Indonesia or in any other country and we do not wish to support or denigrate the independence aspirations of some Papuan activists. However, consistent with international law, we support the right of all individuals, including independence supporters, to express their political views peacefully without fear of arrest or other forms of reprisal, and we have long expressed concerns about ongoing abuses by the security forces in Papua and their complete lack of accountability.

In 2005, President Yudhoyono stated that he wished to resolve problems in Papua "peacefully, fairly, and with dignity"; in 2006, he expressed a preference for "persuasion and dialogue" rather than violence in settling the longstanding grievances in the region. Yet since just 2007, Human Rights Watch has issued four reports on Papua, documenting abuses ranging from severe restrictions on the freedoms of expression, assembly, and association to extrajudicial killings, torture, and rape; many of these abuses were carried out by members of the security forces, including *Brimob*, *Kostrad* (*Komando Cadangan Strategis Angkatan Darat*, or Army

Strategic Reserve Command), and Kopassus (*Komando Pasukan Khusus*, or Special Force Command).

Investigations and prosecutions for abuses in Papua have been extremely limited. In April 2003, a military court in Surabaya found Lt. Col. Hartomo and six other Kopassus members guilty of mistreatment and battery leading to traditional Papuan leader Theys Eluay's death, but not of murder. Their sentences ranged from two to three-and-a-half years' imprisonment. But while Hartomo and another soldier were also sentenced with discharge from the armed forces, until March 15, 2010, he continued to hold a senior position in Kopassus. Although Hartomo was moved out of Kopassus in advance of US reengagement with the force, he has not been discharged from the armed forces. In 2006, Second Lieutenant Situmeang, the TNI officer responsible for shooting and killing Mozes Douw, an unarmed 16 year old, in Paniai, Papua, was sentenced by a military tribunal to eight months in prison.

In July 2010, we released a report, "Prosecuting Political Aspiration." This report profiles six Papuan activists currently imprisoned for "treason," despite the fact that their peaceful calls for either independence or greater political autonomy are guaranteed not only by international law but also by the Indonesian constitution. It also documents that several of them have been tortured in custody and/or denied access to medical care; only after nearly a year of intensive lobbying did Indonesian authorities grant permission for Filep Karma to be taken to Jakarta for prostate surgery.

While Human Rights Watch credits the administration of President Yudhoyono for advancing certain reforms—regular elections, greater media freedom, greater respect for the rights to freedom of association and assembly—one distressing holdover from previous governments, including that of Suharto, is the reality of near-total impunity for the security forces. The current government is at best tolerating and at worst urging the denial of basic rights in Papua, primarily by failing to prosecute those responsible for these abuses, or by installing in the region officials who have been abusive elsewhere and not held to account. Those include:

- the 2007 appointment of a commander for Papua who had been identified by the United Nations as a suspect in the commission of crimes against humanity in East Timor;

- the failure to investigate and prosecute civilians abused by Kopassus forces in Merauke in 2008 and 2009; and
- the May 2010 transfer—rather than investigation and prosecution—of Anthonius Ayorbaba, the notoriously abusive Abepura prison warden, out of Papua; and
- the failure to investigate and prosecute police forces involved in the disemboweling and death of Yawan Wayeni in Serui, August 2009, whose last minutes were recorded in a now infamous video by security forces who taunted him as he laid on the ground, dying, with his intestines in his hands.

Neither quotidian nor high-profile abuses are systematically prosecuted. On March 28, 2010, members of Kostrad tortured four boys who had allegedly stolen a bicycle; they do not appear to have been subject to any sanctions. More than five years after the 2004 murder of prominent human rights activist Munir Said Thalib, the suspected architects of the killing remain free. On February 9, 2010, a team established by the National Human Rights Commission determined that the 2008 trial of former deputy state intelligence chief and one-time Special Forces commander Muchdi Purwopranjono (in which the court acquitted him on charges of orchestrating Munir's murder) had suffered from serious shortcomings. The examination team recommended that prosecutors file for a "case review" of Muchdi's acquittal or that the police reopen the investigation into Munir's murder.

One of the most emblematic examples are the ongoing efforts to hold the Indonesian military to account for the kidnapping of 23 student activists between 1997 and 1998, 13 of whom have not been seen since. In 1999, a military court convicted eight Kopassus officers and three non-commissioned officers of kidnapping the nine of those student activists who were later released alive. Yet their convictions proved to be no impediment to their future career advancement – of the 11 military personnel convicted, seven were known to be serving in the military as of 2007, and all had received promotions. Moreover, the military trial did not cover the cases of the additional thirteen activists who were forcibly "disappeared" or that of another activist who was kidnapped and found dead.

Ongoing efforts to resolve the fate of those activists have proved fruitless: despite the fact that in September 2009 the Indonesian parliament, acting on a report by Indonesia's National Human Rights Commission, recommended the creation of an ad hoc court to investigate the

enforced disappearances, President Yudhoyono, whose authorization is required for the court's creation, has not acted on the recommendation. A few months after the Indonesian parliament issued its recommendation on the ad hoc court, in January 2010, President Yudhoyono appointed Maj. Gen. Sjafrie Sjamsoeddin, who is implicated in the student disappearances along with other serious human rights abuses in Jakarta and East Timor, to the position of deputy defense minister, suggesting that the prospects for any further accountability are slim.

Even efforts by the Indonesian parliament to rein in military impunity have been thwarted. In October 2009, the parliamentary committee with oversight over defense reached agreement with the TNI leadership that exclusive jurisdiction for the investigation and prosecution into abuses committed by members of the military against civilians should be tried in civilian court. Yet the bill has languished in the parliament for more than a year now. Similarly, the Helsinki Agreement signed by the Indonesian government and the Free Aceh Movement set August 31, 2007 as the deadline for establishing a court to address human rights abuses in Aceh; to date no progress has been made.

Despite recent comments both by President Yudhoyono and US Secretary of Defense Robert Gates that the Indonesian security forces have reformed and committed to higher standards of accountability, evidence from recent weeks suggests that abuses continue.

- In August 2010, Indonesian police arrested approximately 12 activists in Ambon, in Maluku Province, for planning to float separatist flags attached to balloons during a visit by President Yudhoyono. Thereafter, eight of the activists alleged that they had been subjected to torture and cruel, inhuman, and degrading treatment by the police and officers of Detachment 88, Indonesia's counter-terrorism police force. In September, Maluku activist Yusuf Sapakoly, convicted "rebellion" in June 2007 and sentenced to 12 years in prison for assisting other activists who displayed a separatist flag during a visit by President Yudhoyono, died of kidney failure after prison authorities in Ambon denied him necessary medical treatment. Sapakoly had previously alleged that he had been subjected to abuse including beatings by police following his arrest in 2007. National Police spokesman Inspector General Marwoto Soeto told the Jakarta Globe that it was "impossible" members of the police force tortured suspects in custody. However, Indonesian authorities responded by centralizing control of Detachment 88 under the national police commander to improve oversight and

stating that the force would no longer contribute to anti-separatist law enforcement efforts in the province.

- In September 2010, an East Jakarta administrative court rejected a lawsuit brought by Indonesian human rights organizations, including KontraS, against Sjafrie Sjamsoeddin, now the Indonesian deputy defense minister. Their petition alleged, in part, that his appointment was inconsistent with the provisions of laws on good governance in Indonesia as he had been implicated by Indonesia's National Commission on Human Rights in three serious instances of human rights violations in 1997-1998, including the disappearances of the student activists. At that time, Sjamsoeddin was the military district commander in Jakarta. The National Commission on Human Rights allegedly named Sjamsoeddin as one party involved in the serious human rights abuses in three reports it sent to the Attorney General's office between 1999 and 2006. However, the Attorney General refused to investigate those allegations further. In its September 2010 decision, the administrative court found that allegations that Sjamsoeddin bore responsibility for serious human rights abuses had no bearing on the legality of his appointment to the position of deputy defense minister and rejected the activists' petition, demonstrating that even repeated calls for investigation by Indonesia's National Human Rights Commission are no impediment to career advancement for members of the security forces accused of serious human rights abuses.
- In an incident in Papua last week, Brimob officers shot and killed one man and critically injured a woman after the officers were hit with stones and an arrow by a mob. The mob was objecting to what they thought was an attempt by a man who caused a traffic accident to seek refuge in a police station. While the police have questioned some Brimob officers about the incident, they have not expressed an interest in interviewing other witnesses, yet have tentatively concluded that excessive force was not used.

That these problems persist tarnishes the progress Indonesia has made in other areas, and challenges characterizations of Indonesia—particularly those being offered up by the US government—that the country has fundamentally transformed. In order for the Indonesian government to make progress in military accountability commensurate with progress in other realms, it should make the following reforms with respect to Papua:

- Immediately and unconditionally release all persons detailed in our July 2010 report and all others held for peaceful expression of their political views. Amnesty International and Human Rights Watch have jointly developed a list of 38 prisoners in Papua and 69 on the Moluccas Islands; that list is included below. To the extent that any such individuals are also alleged to have engaged in acts of violence or illegal trespass, they should be given a new trial in accordance with international standards and credited with time served.
- Amend or repeal all articles of the Indonesian Criminal Code that have been used to imprison individuals for their legitimate peaceful activities, including articles 106 and 110 of the Criminal Code on "rebellion," to bring Indonesian criminal law into conformity with international standards. As currently written, the law allows for prosecution of those engaged in peaceful advocacy of independence.
- Revoke article 6 of Government Regulation No. 77/2007, which prohibits the display of separatist logos or flags, or bring it into compliance with international human rights standards and the Indonesian constitution.
- Promptly respond to credible reports of torture in custody by conducting thorough and impartial investigations and hold legally accountable all those responsible, and revise rules and practices at jails and prisons to ensure compliance by all security forces with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Standard Minimum Rules for the Treatment of Prisoners.
- Remove arbitrary restrictions on access to all regions of Papua by journalists and humanitarian and human rights workers, including the International Committee of the Red Cross, established by the Indonesian government since it officially took over Papua from UN supervision in 1969.

With respect to broader problems with military accountability, the Indonesian government should:

- Permanently discharge personnel convicted of serious human rights abuses;

- Adopt transparent measures to ensure credible, impartial, and timely investigations into all future allegations of human rights abuse;
- Enact legislation allowing civilian courts to investigate and prosecute crimes committed by military personnel against civilians;
- Establish an ad hoc tribunal to investigate the enforced disappearance of student activists in 1997-98, as Indonesia's House of Representatives recommended in September 2009
- Launch renewed investigations into other serious human rights abuses in which security services have been implicated, such as the 2004 murder of Indonesian human rights activist Munir bin Said Thalib;
- Make genuine progress in withdrawing the military from commercial activities; profit-making by the military creates a conflict of interest and also gives the armed forces an independent source of income outside the approved budget process.

Finally, the US should:

- Recondition assistance to the Indonesian military and police on strict standards of accountability for current and past abuses;
- Push for amendment or repeal of Indonesian laws that allow for the imprisonment of individuals for peaceful political expression;
- Push for the passage of Indonesian laws that shift prosecution of soldiers who have abused civilians into civilian courts.

Only when such steps have been taken can we consider credible the July 2010 comments of Armed Forces (TNI) Chief Gen. Djoko Santoso: "As far as the TNI is concerned, the issue of past human rights violations is over."

APPENDIX 1 – PRISONERS OF CONSCIENCE/ PEACEFUL POLITICAL ACTIVISTS
– MALUKU

NO	NAME	DATE OF ARREST	CHARGE (Indonesia n Criminal Code/ KUHP)	SENTENCE PERIOD
	KEMBANG KUNING PRISON, NUSA KAMBANGAN ISLAND			
1	Abner Litamahuputty	2 July 2007	106, 110	10 years
2	Jordan Saiya (cakalele dancer)	29 June 2007	106, 110	17 years
3	Yohanis Saiya (cakalele dancer)	29 June 2007	106, 110	17 years
4	Romanus Batseran	21 June 2007	106, 110	17 years
5	John Markus	25 April 2007	106, 110	17 years
6	Ruben Saiya (cakalele dancer)	29 June 2007	106, 110	20 years
	PERMISAN PRISON, NUSA KAMBANGAN ISLAND			
7	Melkianus Sinay (cakalele dancer)	2 July 2007	106, 110	7 years
8	Mercy Riry (cakalele dancer)	29 June 2007	106, 110	7 years
9	Aleks Malawauw	29 June 2007	106, 110	7 years
10	Flip Malawauw	29 June 2007	106, 110	7 years
11	Semuel Lesnussa	25 July 2007	106, 110	8 years
12	Piter Elia Saiya (cakalele dancer)	29 June 2007	106, 110	9 years
	LOWOKWARU PRISON, MALANG, JAVA			
13	Leonard Hendriks (cakalele dancer)	8 July 2007	106, 110	10 years
14	Yunus Mario Litiloly	16 July 2007	106, 110	10 years
15	Jhon Syaranemual	1 August 2007	106, 110	10 years
16	Ferjon Saiya (cakalele dancer)	29 June 2007	106, 110	12 years
17	Jhony Sinay (cakalele dancer)	29 June 2007	106, 110	15 years
18	Johan Teterisa (cakalele dancer)	29 June 2007	106, 110	Sentenced to life, reduced to 15 years on appeal. He's currently appealing the decision in the Supreme Court
	PORONG PRISON, SURABAYA, JAVA			
19	Marthen Saiya (cakalele dancer)	29 June 2007	106, 110	10 years
20	Yosias Sinay (cakalele dancer)	29 June 2007	106, 110	12 years
21	Marlon Pattiwael	4 September 2007	106, 110	12 years
22	Abraham Saiya (cakalele dancer)	29 June 2007	106, 110	15 years
23	Pieter Yohanes (cakalele dancer)	29 June 2007	106, 110	15 years
24	Jonathan Riry	29 June 2007	106, 110	15 years

25	Fredy Akihary (cakalele dancer)	29 June 2007	106, 110	15 years
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	KEDUNG PANE PRISON, SEMARANG, JAVA			
26	Arens Arnold Saiya (watching the dance)	29 June 2007	106, 110	8 years
27	Melkianus Syaranamual	18 July 2008	106, 110	8 years
28	Ferdinand Arnold Rajawane (cakalele dancer)	29 June 2007	106, 110	10 years
29	Sony Boin Sera	7 August 2007	106, 110	10 years
30	Petrus Rahayaan	1 July 2007	106, 110	12 years
31	Pieter Saiya	29 June 2007	106, 55,56	12 years
	KEDIRI PRISON, JAVA			
32	Izak Saimima	13 October 2007	106, 110	6 years
33	Stevi Saiya	29 June 2007	106, 110	7 years
34	Novis Adolph	13 October 2007	106, 110	6 years
35	Yesayas Kermite	15 August 2007	106, 110	9 years
36	Venty Sapulete	16 August 2007	106, 110	11 years
37	Reimond Tuapattinaya	2 July 2007	106, 110	7 years
	AMBON PRISON IN NANIA, AMBON ISLAND			
38	Buce Nahumury (cakalele dancer)	22 June 2008	106, 110	4 years
39	Simon Saiya	10 January 2008	106, 110	6 years
40	Barce Manuputty	29 June 2007	106, 110	6 years
41	Ferdinand Waas (retired Army captain)	29 June 2007	106, 110	10 years
42	Reinold Ngarbingan	28 August 2007	106, 110	6 years
43	Muladi Taihulu	1 September 2007	106, 110	6 years
44	Ferdinand Noya	13 October 2007	106, 110	6 years
45	Johanis Sipolo	13 October 2007	106, 110	7 years
46	Piere Pattisina	11 August 2007	106, 110	7 years
47	Pieter Latumahina	14 July 2007	106, 110	8 years
48	Dominggus Salamena	26 October 2007	106, 110	8 years
49	Denny de Fretes	13 October 2007	106, 110	8 years
50	Matheis Wattimury	15 August 2007	106, 110	9 years
51	Yohanis Supusepa	16 August 2007	106, 110	9 years
52	Benny Titahena	14 August 2007	106, 110	9 years
53	Semuel Hendriks (cakalele dancer)	29 June 2007	106, 110	10 years
54	Jacob Supusepa	29 July 2007	106, 110	10 years
55	Elia Sinay	29 June 2007	106, 110	10 years
56	Alexander Tanate	29 July 2007	106, 110	10 years
57	Albertus Usmany	27 July 2007	106, 110	10 years
58	Johan Saiya (cakalele dancer)	29 June 2007	106, 110	12 years
59	Yefla Saiya	29 June 2007	106, 110	12 years
60	Daniel Akihary	1 July 2007	106, 110	12 years
61	Jusuf Sapakoly	29 June 2007	106, 110	12 years
62	Erwin Maruanaya	29 June 2007	106, 110	12 years

63	Danel Malawau	21 June 2007	106, 110	15 years
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	PRISONERS ON PAROLE	DATE RELEASED	CHARGE	NOTE
64	Moses Tuwanakotta	December 2009	106, 110	On Parole from Madiun prison, Java

	PRISONERS RELEASED AND APPEALS ARE PENDING	DATE RELEASED	CHARGE	NOTE
65	Semuel Waileruny	21 April 200130 March 2005 (five years jail term) 7 May 20051 April 2006 (3.5 years)	106, 110	Appeal Pending ("bebas demi hukum")
66	Mrs. Christin Kakisina	2 May 200410 December 2004 (two years)	106, 110	Appeal Pending
67	Marthin Telussa	24 April 20089 January 2009 (five years)	106, 110	Appeal Pending
68	Mrs. Eyne Telussa/Siahaya	24 April 20089 January 2009 (five years)	106, 110	Appeal Pending
69	Mikael Pattisinay	12 June 200823 March 2009 (seven years)	106, 110	Appeal Pending

APPENDIX 2 – PRISONERS OF CONSCIENCE/ PEACEFUL POLITICAL ACTIVISTS
– PAPUA

NO	NAME	DATE OF ARREST	CHARGE (Indonesia n Criminal Code/ KUHP)	SENTENCE PERIOD
	ABEPURA PRISON, JAYAPURA, PAPUA			
1	Buchtar Tabuni	3 December 2008	160 (inciting hatred)	3 years
2	Aris Mandowen	16 March 2006	214	5 years
3	Filep Jacob Samuel Karma	1 December 2004	106, 110	15 years
4	Ferdinand Pakage	16 March 2006	214	15 years
5	Luis Gedy	16 March 2006	214	15 years
6	Victor Yeimo	22 October 2009	160	1 year
	NABIRE PRISON, PAPUA			
7	Linus Hiel Hiluka	27 May 2003	106, 110, 154	20 years
8	Kimanus Wenda	12 April 2003	106, 110	20 years
	FAKFAK PRISON, FAKFAK, PAPUA			
9	Simon Tuturop	19 July 2008	106, 107, 110	4 years
10	Tadeus Weripang	19 July 2008	106, 107, 110	4 years
11	Viktor Tuturop	19 July 2008	106, 107, 110	4 years
12	Benediktus Tuturop	19 July 2008	106, 107, 110	4 years
13	Tomas Nimbitkendik	19 July 2008	106, 107, 110	4 years
14	Teles Piahar	19 July 2008	106, 107, 110	4 years
	TIMIKA PRISON, PAPUA			
15	Sumien Magai	1 December 2007	106	5 years
16	Melki Magai	1 December 2007	106	5 years
17	Polce Magai	1 December 2007	106	5 years
	MANOKWARI PRISON, PAPUA			
18	Roni Ruben Iba	1 January 2009	106, 110	3 years
19	Isak Iba	1 January 2009	106, 110	2 years
20	Piter Iba	1 January 2009	106, 110	2 years

	DETAINEES CURRENTLY ON TRIAL	ARREST	CHARGE	NOTES
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21	Samuel Yaru alias Sem Yaru	16 November 2009	106, 110, 160	On trial in Abepura, detained in Abepura now
22	Luther Wrait	16 November 2009	106, 110, 160	On trial in Abepura, detained in Abepura now

	PRISONERS ON PROBATION	ARREST	CHARGE	NOTES
23	Chosmos Yual	27 September 2007	55, 160	On probation after completing 6 years of sentence
24	Matias Dimara	16 March 2006	55, 160	On probation after completing 5 years of sentence
25	Selfius Bobii	16 March 2006	55, 160	On probation after completing 6 years of sentence
26	Elias Tamaka	16 March 2006	55, 160	On probation after completing 5 years of sentence
27	Nelson Rumbiak	16 March 2006	55, 160	On probation after completing 6 years of sentence
28	Ricky Jitmau	16 March 2006	55, 160	On probation after completing 5 years of sentence
29	Patris Aronggear	16 March 2006	55, 160	On probation after completing 5 years of sentence

	PRISONERS RELEASED AND APPEALS ARE PENDING	DATE OF ARREST	CHARGE	NOTES
30	Sebby Sambom	17 December 2009	106, 110, 160	Appeals pending in the Supreme Court
31	Musa Tabuni	3 April 2009	106, 110, 160	Appeals pending in the Supreme Court
32	Serafin Diaz (East Timorese)	3 April 2009	106, 110, 160	Appeals pending in the Supreme Court
33	Yance Mote	3 April 2009	106, 110, 160	Appeals pending in the Supreme Court
34	Septinus Rumere (farmer in Blak, raising flag)	1 December 2009	106	Appeals pending in the Supreme Court

35	Nataniel Runggamusi	3 July 2009	55, 106,	Appeal pending
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			108	("bebas demi hukum")
36	Yance Mambuai	4 July 2009	55, 106, 108	Appeal pending ("bebas demi hukum")
37	Jeret Ronawery	6 July 2009	55, 106, 108	Appeal pending ("bebas demi hukum")
38	Yusuf Aninam	6 July 2009	55, 106, 108	Appeal pending